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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 11, 2000

PETITION OF

CAVALIER TELEPHONE, LLC

CASE NO. PUC990191

For arbitration of interconnection
rates, terms and conditions and
related relief

ORDER INITIATING FORMAL PROCEEDING

On October 18, 1999, Cavalier Telephone, LLC ("Cavalier"), filed an informal complaint against Bell Atlantic-Virginia, Inc. ("BA-VA"), alleging violation of the Telecommunications Act of 1996 ("Act") and breach of the interconnection agreement between the parties. Further, Cavalier's pleading petitioned the Commission for arbitration of unresolved interconnection issues between BA-VA and Cavalier related to the installation and recurring charges for digital subscriber line ("DSL") loops.

Pursuant to the Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) released September 15, 1999, by the Federal Communications Commission ("FCC"), incumbent local exchange companies ("ILECs")

including BA-VA must provide unbundled access to loops used to provide high-capacity and advanced telecommunications services.¹

The informal complaint portion of Cavalier's pleading was processed pursuant to Rule 5:4 of the Commission's Rules of Practice and Procedure ("Rules"). The Director of the Division of Communications called for BA-VA's response, which was received on December 17, 1999.

On November 12, 1999, BA-VA filed its Motion to Dismiss the portion of Cavalier's petition that requested our arbitration of prices for DSL loops and DDL loops as being untimely because it did not fall within the window set forth under § 252(b)(1) of the Telecommunications Act. Cavalier filed its response to BA-VA's motion on December 3, 1999.

On January 5, 2000, Cavalier filed a petition to convert its informal complaint of October 18, 1999, into a formal proceeding, pursuant to Rule 5:6, and replied to BA-VA's response to the informal complaint.

The Commission, having considered all of the pleadings filed herein, finds that the informal complaint by Cavalier should now be converted into a formal proceeding pursuant to

¹ The Commission did not initially find DSL loops to be "network elements" in its Order of May 22, 1998, which established prices for unbundled network elements, Case No. PUC970005, because BA-VA did not then offer DSL services to the general public. (1998 S.C.C. Ann. Rep. 215) However, BA-VA now offers DSL services on a retail basis, and the parties do not dispute whether BA-VA must provide DSL loops.

Rule 5:6, and that BA-VA should be ordered to file its Answer and any other responsive pleading by February 24, 2000. The Commission takes no further action at this time on Cavalier's request for arbitration or the motion to dismiss Cavalier's request for arbitration.

Both parties are directed to file briefs on the following issues:

1. Is jurisdiction over this complaint properly before this Commission, the FCC, or a state or federal court of general jurisdiction?
2. If jurisdiction over the complaint properly lies with this Commission, what remedies are available to the Commission?
3. Is there a basis in Virginia law for the Commission to assert or exercise jurisdiction over the request for the Commission to arbitrate unresolved issues between the parties that is independent of any authority contained in the Act?
4. Should the Commission establish a generic case to establish BA-VA's prices for DSL loops as an unbundled network element and is there a basis to do so under state law?

Concerning the last subject, the Commission is interested in whether state law might serve as the basis for our exercising jurisdiction in this matter without waiving (constructively or otherwise) state immunity under the Eleventh Amendment to the United States Constitution. All briefs are due on or before March 6, 2000.

The Commission appoints a Hearing Examiner to review all pleadings and briefs to be filed in this proceeding and make a report to this Commission concerning the issues identified above and to make recommendations on appropriate procedures to be followed in this matter.

ACCORDINGLY, IT IS THEREFORE ORDERED THAT:

(1) The Complaint filed by Cavalier on October 18, 1999, and amended and supplemented on January 3, 2000, is hereby converted to a formal proceeding, and Bell Atlantic-Virginia, Inc., is hereby directed to file responsive filings as set forth above.

(2) The parties are directed to file briefs on or before March 6, 2000, as set forth above.

(3) The Commission hereby appoints a Hearing Examiner to review the pleadings and briefs and to make a report and recommendations thereon, as set forth above.

(4) This case is now continued generally.